THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.16165 of 2007

Dated: 14.08.2007

Between:

Pydi Thavithinaidu.

..... PETITIONER

AND

The State of Andhra Pradesh,
rep. by its Revenue Divisional Officer, Srikakulam, and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.16165 of 2007

ORDER:

Kanithi Arunamma, a non-resident Indian staying in the United States of America, represented by her father filed instant writ petition. The affidavit in support of the writ petition is sworn by her father, namely, Pydi Thavithinaidu. She prays for a writ of Mandamus declaring the action of the respondents, namely, the Revenue Divisional Officer (RDO), and the Tahsildar, Narasannapeta Mandal, in trying to dispossess her from land admeasuring Acs.2.20 in survey No.93/2 situated at Chodavaram Village, Narasannapeta, Srikakulam District, as illegal, arbitrary and contrary to the provisions of the Andhra Pradesh Land Reforms (Ceiling

on Agricultural Holdings) Act, 1973 (the Act, for brevity). She also seeks a direction to the respondents to dispose of the representation dated 03.07.2007.

The case of the petitioner, in brief, is as follows. She purchased an extent of Ac.1.70 in survey No.93/2 under a registered sale deed dated 26.03.1998 from Smt.Adapa Rama Lakshmi, W/o Adapa Mohana Rao. She also purchased another extent of land admeasuring Ac.0.50 in survey No.93/25 under a registered sale deed dated 24.03.2007. Insofar first extent of land is concerned, she also obtained pattadar passbook (PPB)/title deed from the respondents. After purchasing second extent of land, she submitted PPB of her vendor to the revenue authorities for necessary correction. Without passing any orders thereon, the Mandal Revenue Inspector and the Mandal Surveyor allegedly came to the Village on 19.06.2007 and proclaimed that they will take physical possession of the land comprised in survey No.93/2 to an extent of Ac.0.98 declared as surplus land under the Act. Therefore, instant writ petition is filed.

At the stage of admission itself, on 30.07.2007 the learned Assistant Government Pleader for Revenue (General-A) brought to the notice of this Court that the land in survey No.93/2 was declared as surplus land, that it was taken possession by the Government and was assigned to twenty-three landless poor persons and that the petitioner was not in possession of the land. Therefore, this Court directed a proper affidavit/counter-affidavit by the respondents.

Second respondent filed a counter-affidavit. It is stated that Adapa Mohana Rao filed a declaration under the Act and was declared to be the surplus landholder of land to an extent of 0-4508 standard holdings. This was appealed unsuccessfully before the appellate authority/Court as well as the revisional authority/Court and ultimately the Supreme Court dismissed the matter on 21.02.1981. The declarant proposed to surrender land to an extent of Acs.3.74 in survey Nos.99/2, 99/3 and 98/7. This issue was raised by Smt.S.Janardhanamma, which was rejected by the original authority as well as the appellate authority and the revisional authority in C.R.P.No.458 of 1986. Thereafter land to an extent of Ac.0.98½ in survey No.93/2 was taken possession after conducting survey and subdividing the land in survey No.93/2-B for land admeasuring Ac.0.98½. It is further alleged that the sale in favour of the petitioner in 1998 and 2007 after coming into force of the Act is illegal and void. In paragraph 9 of the affidavit, it is stated that the land was assigned to twenty-three unidentified persons in 1992 and the possession was delivered on 20.06.2007.

The learned counsel for the petitioner submits that the land purchased by the petitioner from Smt.Adapa Rama Lakshmi, wife of the declarant, is comprised in survey No.93/2 and that the same was not surrendered by the declarant. He secondly submits that in view of the admission contained in the counter-affidavit that the petitioner is in possession of the land she cannot be dispossessed from the land without due process of law. **Opposing** the learned Assistant Government Pleader for Revenue (General-A) submits that the land in survey No.93/2 to an extent of Ac.0.98 ½ was taken possession along with the other lands after conducting proper survey and the same is already handed over to the landless poor persons. He submits that there is no admission on the part of the respondents that the petitioner is in possession.

A copy of the proceedings in Rc.No.30/2001 B dated 18.06.2007 issued by second respondent is placed before this Court, from which it is clear that twenty-three persons were assigned land to an extent of about Ac.0.25 each in survey Nos.93/2B and 115. Even otherwise the petitioner has not filed any reply-affidavit denying the counter averments. In the absence of any such denial there is no reason to disbelieve the counter version. Secondly the submission of the learned counsel for the petitioner that the petitioner is in possession of the land cannot be accepted. In paragraph 9 of the counter-affidavit, second respondent stated as under.

> the surplus land of the declarent which includes the land in Survey No.93/2 was taken possession long prior to the purchase made by the petitioner and it was also placed before the assignment committee and which has assigned the land in favour of the 23 identified beneficiaries as early as in the year 1992 and after the entire litigation has ended, the physical possession was delivered to the said assignees on 20.06.2007 and therefore, the claim made by the petitioner that the petitioner is in possession and enjoyment of the land is far from truth and even if the petitioner is in possession, the said possession is illegal and therefore, absolutely there is no illegality or irregularity in the action of the respondents in delivering the physical possession to the 23 assignees and therefore the petitioner has no right over the land in Survey No.93/2 to an extent of Ac.0.98 ½ cents. It is pertinent to state here that only 0.98 ½ was taken possession as the said land was declared as surplus land of the declarent and from the date of taking

possession, the purchases, if any, made by the petitioner is not binding on the Government.

(emphasis supplied)

A reading of the above counter averments as a whole do not lend any support to the submissions made by the learned counsel for the petitioner. There is no admission by second respondent that the petitioner is in possession of the land. However, this Court observes that now that the dispute is only regarding land admeasuring Ac.0.98 ½ comprised in survey No.93/2-B, second respondent may conduct a fresh survey and properly delienate the land to avoid any future dispute.

The writ petition, with the above observations, is accordingly disposed of. No costs.

(**V.V.S.RAO, J**)

14th August, 2007
ghn